STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0015

In the Matter of the Children of: S. L. L. and M. J. T., Parents.

Filed June 13, 2022
Affirmed
Cleary, Judge[*]

Wright County District Court
File No. 86-JV-21-1181

Jason Steck, St. Paul, Minnesota (for appellant M.J.T.)

Brian A. Lutes, Wright County Attorney, John A. Bowen, Assistant County Attorney, Buffalo, Minnesota (for respondent county)

Cathleen Gabriel, Annandale, Minnesota (for respondent S.L.L.)

Janell Trocke, Stillwater, Minnesota (guardian ad litem)

Considered and decided by Jesson, Presiding Judge; Wheelock, Judge; and Cleary, Judge.

NONPRECEDENTIAL OPINION

CLEARY, Judge

Appellant-father challenges the termination of his parental rights to two children, arguing that (1) the district court misapplied the standard for rebutting the presumption of palpable unfitness and erroneously determined that appellant had not rebutted the

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

presumption; (2) the district court relied on improper factors when it determined that termination was in the children's best interests; and (3) judicial bias and attorney misconduct denied him a fair trial. We affirm.

FACTS

Appellant M.J.T. is the biological father of five children: R.N.T. (born 2004), N.J.T. (born 2008), S.A.T. (born 2012), K.K.A.T. (born 2019), and S.R.T. (born 2021).

Appellant's involvement with child-protective services began in 2008 when Arizona authorities received reports of physical abuse regarding R.N.T. and N.J.T. R.N.T., who was four at the time, appeared at daycare with a bruised eye, which was her third black eye in a four-month period. Appellant admitted to accidentally causing one of the black eyes. N.J.T. was treated later that year for bruising and swelling on his genitals, various fractures, and a depressed area on his skull. Appellant explained that N.J.T.'s injuries were caused by his car seat or by appellant accidentally kicking him or grabbing him too hard while changing his diaper. N.J.T. was labeled a "medically fragile" infant and experienced significant developmental delays.

Arizona authorities continued to receive child abuse and injury reports through 2013 regarding N.J.T. and two other children in appellant's care, A.A.R. and K.C.W, who were the biological children of appellant's then-partner, S.C. Among other things, the reports included: that N.J.T. was not getting his asthma medication; that there was a large sore on N.J.T.'s chest; an emergency-room visit in which A.A.R. was seen for bruising, head injuries, and a chest wound; and treatment for A.A.R. for a hemorrhage in his eye, bruising,

a scratched face and buttocks, and a mark on his head that appeared to be from being hit with a belt buckle.

Appellant and S.C. moved to Minnesota in 2013. In May 2013, A.A.R. was brought to the hospital for injuries that reportedly occurred after A.A.R. fell down the stairs. A.A.R. had bruises all over his left eye and forehead. In June 2013, Carver County Community Social Services (CCCSS) received a report that A.A.R. had significant bruising on his face and a scab on his genitals and that the other children in appellant's care were hungry. CCCSS investigated and found that four of the five children had bruising. CCCSS filed a child-in-need-of-protection-or-services (CHIPS) petition, alleging that S.A.T., A.A.R., K.C.W., N.J.T., and R.N.T. needed protection or services. In August 2013, appellant admitted the allegations of the CHIPS petition.

In September 2013, CCCSS filed a petition to terminate appellant's parental rights. Appellant admitted to an involuntary termination of his parental rights to all of his children. The district court adopted paragraph four of CCCSS's petition as the factual basis for appellant's involuntary-termination admission. Paragraph four detailed: appellant's prior involvement with child protection in Arizona; A.A.R.'s extensive bruising and injuries; statements from K.C.W., N.J.T., and R.N.T. that appellant had hit, bit, and choked them; appellant's statements to police that he hit the children with a belt; and reports that, after the children were placed in foster care, their bruises healed and their bodies remained clear of any new significant bruising. Based on its findings in paragraph four, CCCSS made maltreatment findings of physical abuse of A.A.R., N.J.T., and K.C.W. and findings of neglect and mental and emotional harm as to all five children.

The district court terminated appellant's parental rights to all of his children in October 2013.[1] Shortly after, appellant also pleaded guilty to and was convicted of felony-level malicious punishment of a child, in violation of Minn. Stat. § 609.377, subd. 1 (2012).

Appellant met S.L.L. in 2015 and has been in a relationship with S.L.L. for approximately four years. Appellant and S.L.L. had a child, K.K.A.T., born in 2019. K.K.A.T. has been diagnosed with hip dysplasia, hypothyroidism, and infantile spasms; she is in the care of specialty doctors and qualifies for special education. In January 2021, appellant and S.L.L. brought K.K.A.T. to the emergency room because she would not bear weight on her left leg. An x-ray showed that K.K.A.T. had a broken leg. Later medical review of the visit stated that K.K.A.T. could have been injured during normal childhood activities but also stated that it was not possible to determine whether maltreatment occurred. Respondent Wright County Health and Human Services did not make a finding of maltreatment for K.K.A.T.'s injuries.

Appellant and S.L.L. had another child, S.R.T., in February 2021. In March 2021, respondent received a birth-match report for S.R.T., which alerted it that appellant had fathered additional children since his 2013 termination. Because appellant's parental rights to other children were previously involuntarily terminated, respondent was required under

[1] The district court listed four grounds for appellant's 2013 termination: (1) he was palpably unfit to be a party to the parent and child relationship under Minn. Stat. § 260C.301, subd. 1(b)(4) (2012); (2) following out-of-home placement, reasonable efforts failed to correct the conditions leading to the children's placement under Minn. Stat. § 260C.301, subd. 1(b)(5) (2012); (3) a child had experienced egregious harm under Minn. Stat. § 260C.301, subd. 1(b)(6) (2012); and (4) the children were neglected and in foster care under Minn. Stat. § 260C.301, subd. 1(b)(8) (2012).

Minn. Stat. § 260.503, subd. 2(a)(4) (2020), to immediately file a petition to terminate appellant's parental rights to K.K.A.T. and S.R.T. Respondent filed an expedited termination petition on March 15, 2021, alleging that, under Minn. Stat. § 260C.301, subd. 1(b)(4) (2020), appellant is palpably unfit to be a party to the parent and child relationship.

The district court held a trial on the termination petition in September 2021. The district court heard testimony from appellant; S.L.L.; two Wright County social workers; a Carver County social worker; the guardian ad litem (GAL); parenting assessor Dr. Linda Marshall; and two of appellant's mental healthcare providers, Dr. Mark Thelen and Michael Keegan.

At trial, appellant testified that he did not remember details of the 2013 termination petition and could not recall why he had admitted to it. Appellant admitted that he hit A.A.R. with a belt but did not admit to anything else in the 2013 petition. He stated generally that "I take responsibility for what possibly had happened because I should have been a better parent," but when asked if he took responsibility for injuries other than the belt incident with A.A.R., he said no. However, appellant briefly testified again at the end of the trial and, in response to the district court asking if he had abused the children before the 2013 termination, appellant answered, "Back then, yes I did. But some of the stuff that's in the report, I did not do. But the majority of it is true, yes."

Appellant acknowledged his mental health diagnoses and stated that he now regularly takes medication for his bipolar disorder. Appellant explained that his medication made him less depressed and less paranoid. He stated that he had also recently started therapy sessions with Dr. Thelen. Appellant identified his healthy relationship with S.L.L.,

a post-2013 anger management class, and regular medication as factors that contributed to his positive changes since 2013. He did not think that he needed parenting help or further anger management treatment but stated that he would comply with a case plan and participate in any recommended services.

S.L.L. testified generally that she and appellant have a "great relationship" with "a lot of teamwork." She felt that appellant has changed and that, when she read the 2013 reports, she was "reading about a completely different person, like someone I don't know, like it's a complete 180." S.L.L. identified "the assessments he did" and anger management as factors contributing to appellant's change. S.L.L. testified that appellant was bonded with K.K.A.T. and described him as a kind and patient partner and father.

Dr. Marshall, a licensed psychologist who conducted a parenting assessment on appellant's request, testified about her evaluation of appellant. As part of her evaluation, Dr. Marshall conducted psychological testing of appellant, observed him with K.K.A.T. and S.R.T., spoke to his mental healthcare providers, and reviewed records of the 2013 termination. Dr. Marshall noted that she could not get information about appellant's past from appellant. She recognized similarities to the 2013 reports that appellant "was not open about talking about any type of abuse and was in denial about that abuse." She did not believe appellant could identify changes he had to make after 2013, noted that appellant failed to seek necessary individual therapy between 2013 and 2021, and believed that appellant had not addressed crucial issues. Specifically, she described appellant's lack of "insight" into his past behaviors and his failure to accept responsibility, which she characterized as a "roadblock for change." Dr. Marshall noted that on the Adult-

Adolescent Parenting Inventory Test, appellant scored in the moderate or higher risk categories on four of the five scales measuring parenting strengths and weaknesses. The rest of appellant's testing was invalid because appellant's responses were defensive.

Although she acknowledged appellant's persistence in getting the assessment, his stabilized mood due to his medication, and his engagement with his children during her observation, Dr. Marshall did not recommend reunification. Her report stated that appellant failed to make sufficient changes to ensure the safety of his children and continued to believe he did nothing wrong regarding the past abuse allegations.

Psychologist Dr. Mark Thelen disagreed with Dr. Marshall's recommendation and testified instead that he believed appellant should be given a "second chance." Appellant began seeing Dr. Thelen in May 2021, after respondent filed the termination petition. Dr. Thelen performed a diagnostic assessment and diagnosed appellant with bipolar disorder and post-traumatic stress disorder. Dr. Thelen noted that appellant initially denied the allegations about his past behavior but became more truthful and motivated over the course of their appointments. Dr. Thelen conceded that they had not discussed appellant's first three biological children and had not talked "about much of his past," but Dr. Thelen nevertheless felt that appellant was a "different person" than he was in 2013. Dr. Thelen based his recommendation that appellant be given a "second chance" on the fact that appellant was sincere in his desire to go to therapy, sincere in his desire to be a father to K.K.A.T. and S.R.T., and committed to being a good father.

Keegan, a nurse practitioner who has seen appellant regularly for 15- to 30-minute medication-management appointments since 2015, also testified. Keegan testified that

appellant consistently takes his prescribed medication to manage his bipolar disorder. He also stated that appellant is more compliant, less angry, happier, sleeping more, and better at managing his emotions since starting medication treatment in 2015.

The district court heard testimony from social workers involved in appellant's 2013 and 2021 termination cases. The social worker assigned to appellant's 2013 case testified about her investigation into the abuse allegations against appellant in 2013. She described the 2013 events as "the most egregious physical abuse case" that she had seen in her 15 years as a social worker. She noted that during the 2013 case, appellant did not recognize his own issues and that he had minimized the problems and blamed others. The two social workers assigned to appellant's current case also testified. Both stated that they did not believe there would be a case plan that would ensure the safety of the children in appellant's care; that S.L.L. could not keep the children safe if appellant was in the house; and that termination of appellant's parental rights was appropriate and in the best interests of K.K.A.T. and S.R.T. The social workers stated that their recommendations were based on the severity of appellant's past abuse, the lack of documented evidence of change in appellant's behaviors and insight, and the need to ensure the safety of the children.

Finally, the GAL assigned to appellant's case testified last and recommended termination. To prepare her recommendation, the GAL reviewed the termination petitions; spoke to appellant, S.L.L., and the social workers; read Dr. Thelen's and Dr. Marshall's assessments; and met with the children. The GAL stated that, based on the seriousness of the injuries from 2013, appellant's lack of ongoing relationship with the children, and the need for safety of the children, terminating appellant's parental rights was in the best

interests of K.K.A.T. and S.R.T. The GAL did not believe that appellant's post-2013 anger management and medication were enough to make appellant a safe parent.

In November 2021, the district court terminated appellant's parental rights to K.K.A.T. and S.R.T. The district court first found that the county was not required to make reasonable efforts to reunify appellant with the children because appellant's parental rights to another child had been terminated involuntarily. *See* Minn. Stat. § 260.012(a)(2) (2020). The district court then stated that appellant's prior termination triggered a presumption under Minn. Stat. § 260C.301, subd. 1(b)(4), that he is palpably unfit to be a party to the parent and child relationship. The district court determined that appellant failed to rebut that presumption and that there was clear and convincing evidence to terminate appellant's parental rights.

In so determining, the district court found appellant's testimony not credible. The district court emphasized the severity of the prior child abuse and found that appellant had not adequately admitted to his past conduct. It stated that appellant's inability to remember past events made it difficult to assess his mental health and that the sole change adequately demonstrated at trial was that appellant now takes medication for his bipolar disorder. The district court concluded that appellant's brief, recent involvement in therapy did not demonstrate a commitment to change, and "[g]iven the severity of events that occurred in 2013," was "insufficient to prove a change of circumstances showing that [he] can raise his children safely." The district court found that "if [appellant] is reunited with K.K.A.T. and S.R.T., it is highly likely that his unresolved mental health issues will endanger their physical and emotional health." The district court found S.L.L.'s view of appellant's

changes "naïve" and instead credited Dr. Marshall's recommendation that appellant should not be reunited with K.K.A.T. and S.R.T. It concluded that appellant "is not presently able to assume the responsibility of caring for his children" and "this inability will continue for a prolonged, indeterminate period."

The district court then found that it is in K.K.A.T. and S.R.T.'s best interests that appellant's parental rights be terminated because the children's need for "stability, proper care, and safety" outweigh any interest in preserving the parent-child relationship.

This appeal follows.

DECISION

I. The district court did not err in determining that appellant is palpably unfit.

Appellant argues that the district court (1) imposed the wrong standard for rebutting the statutory presumption of palpable unfitness; (2) erred by finding that appellant failed to rebut the presumption; and (3) abused its discretion in concluding that there was clear and convincing evidence that appellant is palpably unfit. We address each in turn.

A district court may terminate parental rights if (1) at least one statutory ground for termination is supported by clear and convincing evidence; (2) the county either made or was not required to make reasonable efforts to reunite the family; and (3) termination is in the child's best interests. *See In re Welfare of Child. of S.E.P.*, 744 N.W.2d 381, 385 (Minn. 2008); Minn. Stat. § 260C.301, subd. 1(b) (setting out statutory grounds for termination); Minn. Stat. § 260.012(a) (2020) (establishing when reasonable efforts are required). "[W]e review the district court's determinations of whether a statutory ground for termination exists and whether termination is in the child's best interests for an abuse of discretion."

In re Welfare of Child of J.H., 968 N.W.2d 593, 600 (Minn. App. 2021), *rev. denied* (Minn. 2021). We give "considerable deference" to the district court's decision to terminate parental rights but "closely inquire" into the sufficiency of the evidence to determine whether it was clear and convincing. *See S.E.P.*, 744 N.W.2d at 385.

A district court may terminate parental rights if:

> a parent is palpably unfit to be a party to the parent and child relationship because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.

Minn. Stat. § 260C.301, subd. 1(b)(4).

The statute creates a presumption that a parent is palpably unfit if his parental rights to a different child were previously involuntarily terminated. *Id.* But the presumption is "easily rebuttable." *In re Welfare of Child of R.D.L.*, 853 N.W.2d 127, 137 (Minn. 2014). To rebut the presumption, the parent need only "introduc[e] evidence that would justify a finding of fact that [the parent] is not palpably unfit." *Id.* (quotations omitted). In other words, the parent bears the burden of producing "only enough evidence to support a finding that the parent is suitable to be entrusted with the care of the children." *Id.* (quotation omitted); *In re Welfare of Child of J.A.K.*, 907 N.W.2d 241, 245-46 (Minn. App. 2018).

"[W]hether the evidence satisfies the burden of production is determined on a case-by-case basis." *R.D.L.*, 853 N.W.2d at 137. The district court must determine whether the evidence is sufficient to create a genuine issue of fact as to the parent's palpable unfitness.

J.A.K., 907 N.W.2d at 246. If the parent produces such evidence, the statutory presumption is rebutted and has no further effect at the trial; the district court must instead "find the existence or nonexistence of the alleged palpable unfitness upon all the evidence exactly as if there had never been a presumption at all." *Id.* (quotations omitted).

A. The district court did not err by applying the standard set forth in *R.D.L.* that, to rebut the presumption of palpable unfitness, a parent need only produce enough evidence to justify a finding that the parent "is suitable to be entrusted with the care of the children."

Appellant first argues that the supreme court in *R.D.L.* set forth two standards for rebutting the presumption of palpable unfitness by first stating that a parent rebuts the presumption "by introducing evidence that would justify a finding of fact that the parent is not palpably unfit," then further explaining that the parent must produce "only enough evidence to support a finding that the parent is suitable to be entrusted with the care of the children." *See R.D.L.*, 852 N.W.2d at 137. Appellant argues that the two standards are different and that only the first formulation—that is, that the parent must only produce evidence justifying a finding that the parent is "not palpably unfit"—is constitutionally permissible. Appellant argues that the district court erred by applying the second formulation and requiring appellant to produce evidence that he is currently "suitable to be entrusted with the care of the children."

We are bound by supreme court precedent. *See State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018); *State v. Rohan*, 834 N.W.2d 223, 227 (Minn. App. 2013) ("[W]hen the supreme court has already construed a statute, this court is bound by that interpretation."),

rev. denied (Minn. Oct. 15, 2013). We are also bound by our own precedential opinions. *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010).

The supreme court addressed a constitutional challenge to the statutory presumption of unfitness in *R.D.L.*, 853 N.W.2d at 136-38. In a lengthy discussion of the statute, the supreme court affirmed our holding that "a parent rebuts the presumption by introducing evidence that would justify a finding of fact that [the parent] is not palpably unfit." *Id.* at 137 (quoting *In re Welfare of Child of J.W.*, 807 N.W.2d 441, 445-46 (Minn. App. 2011)). It then explained that the burden imposed by the presumption is not a heavy one, because "the parent needs to produce only enough evidence to support a finding that the parent is suitable 'to be entrusted with the care' of the children." *Id.* (quoting *In re Welfare of Clausen*, 289 N.W.2d 153, 156 (Minn. 1980)). We applied that same standard in *J.A.K.*, stating that a parent rebuts the presumption "by introducing evidence that would justify a finding of fact that [the parent] is not palpably unfit. In other words, a parent . . . needs to produce only enough evidence to support a finding that the parent is suitable to be entrusted with the care of the children." 907 N.W.2d at 246 (quotations omitted).

R.D.L. and *J.A.K.* establish that evidence justifying a finding that the parent "is not palpably unfit" means evidence justifying a finding that the parent "is suitable to be entrusted with the care of the children." According to both supreme court precedent and our own precedent, the "introducing evidence showing the parent is suitable to be entrusted

with the care of the children" standard is the correct standard, and the district court did not err by applying it.[2]

B. The district court erred when it determined that appellant failed to rebut the presumption of palpable unfitness.

Appellant next argues that he produced sufficient evidence to rebut the presumption of palpable unfitness. We agree.

As noted above, the evidence necessary to rebut the presumption of palpable unfitness need only "create a genuine issue of material fact" as to whether the parent is palpably unfit. *J.A.K.*, 907 N.W.2d at 246. In determining whether a parent's evidence rebuts the presumption, the district court should credit and consider the evidence without weighing it against contrary evidence. *See J.W.*, 807 N.W.2d at 445-47 (concluding that parent's evidence, "if believed," would support a finding that she was not palpably unfit and concluding that parent rebutted presumption despite introduction of contrary evidence by the county); *see also Jacobson v. $55,900 in U.S. Currency*, 728 N.W.2d 510, 523 (Minn. 2007) (stating that, generally, "a district court should not engage in a qualitative evaluation or weighing of the evidence when deciding whether a [party] has produced sufficient evidence to rebut [a] statutory presumption"). Extensive credibility determinations are therefore usually not appropriate when determining whether a parent

[2] We also note that, although appellant argues that the district court's order rests "entirely" on whether appellant is *immediately* suitable to be entrusted with the care of the children, the district court stated multiple times that appellant's problems would take significant time to address and that appellant would be unable to care for his children for a prolonged, indeterminate period. As we discuss *infra* section I.C., the district court focused not just on whether appellant was immediately unsuitable to care for his children but also on whether appellant would be unsuitable for the reasonably foreseeable future.

rebutted the presumption of palpable unfitness, although a district court is not necessarily prohibited from making *any* credibility determinations. *See Jacobson*, 728 N.W.2d at 523 (noting that credibility may be essential "when the [party's] only evidence is his own testimony," which "no reasonable fact[-]finder would believe"); *see also In re Civ. Commitment of Poole*, 921 N.W.2d 62, 68 (Minn. App. 2018) (stating that a party's own uncorroborated assertions are insufficient to meet that party's burden of production), *rev. denied* (Minn. Jan. 15, 2019). We review de novo a district court's determination on whether a parent has rebutted the statutory presumption of palpable unfitness. *J.A.K.*, 907 N.W.2d at 246.

Here, appellant provided evidence that he has made changes since the 2013 termination that could, if believed, support a finding that appellant is suitable to be entrusted with the care of the children. Appellant testified that his current relationship is healthy, supportive, and free of the stresses he experienced in his prior relationships. He also testified that he has been on medication since 2015 for his bipolar disorder and that the medication has helped him manage his moods. He stated that he completed anger management treatment after his 2013 termination, which helped him control his temper.

Appellant also produced other corroborating evidence. S.L.L. testified that appellant has changed significantly since 2013; that his anger management, the assessments he did, and their healthy relationship contributed to that change; and that appellant is now a patient and loving father to K.K.A.T. Keegan corroborated appellant's testimony that he has been consistent with his medication and that the medication led to significant improvement in appellant's mood, sleep, and emotional control. Dr. Thelen

noted that appellant had become more truthful and motivated over the short course of their therapy, had changed since 2013, was committed to being a good father, could control his anger, would be willing to deal with his past, and should be given a second chance to parent. Finally, although Dr. Marshall did not recommend reunification, she also stated that, if appellant would be honest and seek therapy, it may be possible to change his behavior and see progress in two or three months.

The district court's determination that appellant failed to rebut the presumption appears to rest on its finding that appellant was not credible and that evidence from other witnesses based on appellant's "false statements" was also not credible, as well as its conclusion that appellant's evidence was outweighed by other evidence that appellant remains an unsafe parent. But those credibility determinations and the weighing of evidence are generally not appropriate when considering whether the statutory presumption of palpable unfitness is rebutted. *See J.W.*, 807 N.W.2d at 445-47.

We conclude that appellant produced enough evidence to create a genuine issue of fact as to whether he is suitable to be entrusted with the care of the children, which is all that he was required to do to rebut the presumption of palpable unfitness. The district court therefore erred when it concluded that appellant failed to rebut the presumption.

C. The district court did not abuse its discretion when it determined that clear and convincing evidence showed that appellant is palpably unfit.

Although the district court erroneously determined that appellant failed to rebut the presumption of unfitness, it also found that "[f]urther, there is clear and convincing

evidence to terminate the parental rights of appellant pursuant to Minn. Stat. § 260C.301, subd. 1(b)(4)."

Once the presumption of palpable unfitness is rebutted, respondent has the burden of proving by clear and convincing evidence that appellant "is palpably unfit because of a consistent pattern of specific conduct before the child or of specific conditions directly relating to the parent and child relationship, either of which are . . . of a duration or nature that renders the parent unable, for the reasonably foreseeable future," to care for the needs of the child. Minn. Stat. § 260C.301, subd. 1(b)(4). "A decision to terminate parental rights must be based on the conditions that exist at the time of termination and it must appear that the conditions giving rise to the termination will continue for a prolonged, indeterminate period." *J.W.*, 807 N.W.2d at 446 (quotations and citations omitted).

When reviewing an involuntarily termination of parental rights, we review factual findings for clear error and, as noted above, we review whether a statutory basis to involuntarily terminate parental rights exists for an abuse of discretion. *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 87 (Minn. App. 2012). A finding is clearly erroneous if it is manifestly contrary to the weight of the evidence or not reasonably supported by the record. *Id.*; *see also In re Commitment of Kenney*, 963 N.W.2d 214, 221-23 (Minn. 2021) (discussing clear-error standard of review); *J.H.*, 968 N.W.2d at 601 n.6 (applying *Kenney* in a termination-of-parental-rights appeal). The district court abuses its discretion if it improperly applies the law. *J.K.T.*, 814 N.W.2d at 87.

In support of its decision to terminate appellant's parental rights, the district court found that "ample evidence shows that [appellant] suffers from severe and significant

mental health issues that have caused his children great harm." The district court also found that until the time of the trial, appellant denied the past physical abuse, continued to minimize or deflect blame for his past conduct, and failed to engage in meaningful therapy to address his unresolved mental health issues. The district court found that it was likely that appellant's "unresolved mental health issues will endanger [K.K.A.T.'s and S.R.T.'s] physical and emotional health, as [appellant's] mental health directly affects his ability to parent and keep the children safe." The district court also found that appellant's unresolved issues would take "significant time" to address, that any improved insight he gained would not "equate to safety for his children in the reasonably foreseeable future," and that, given the longstanding nature of his issues, appellant is "not presently able" to safely care for his children, and "this inability will continue for a prolonged, indeterminate period."

Although appellant argues that the district court misapplied the law by focusing on appellant's past, appellant concedes that the district court could consider his history insofar as it establishes a pattern of conduct or conditions that persist to the present day. While the district court did consider appellant's prior behavior and express special concern about the severity of the abuse that led to the 2013 termination, it also considered and credited evidence showing appellant's current lack of insight, his ongoing patterns of denial and deflection, his failure to engage in individual therapy in the time between the 2013 termination and the filing of the current termination petition, and his failure to acknowledge and address his history of abuse as part of his mental-health treatment. Those findings are supported by the evidence produced at trial.

Given the severity of appellant's history of abuse, and the ample evidence in the record that appellant continues to undermine meaningful treatment progress by denying, minimizing, and deflecting blame for the harm he caused to other children in his care, we agree with the district court that respondent met its burden of showing that patterns and conditions persist which render appellant unable to safely care for his children. We therefore conclude that the district court did not abuse its discretion by ruling that appellant is palpably unfit under section 260C.301, subdivision 1(b)(4).[3]

II. The district court did not abuse its discretion by ruling that termination is in the best interests of the children.

Appellant argues that the district court abused its discretion because it based its ruling that termination is in the best interests of the children on improper factors.

Even if a statutory basis for termination exists, the child's best interests must be the "paramount consideration" in any termination proceeding. Minn. Stat. § 260C.301, subd. 7 (2020). When determining whether termination is in a child's best interests, the district court balances three factors: (1) the child's interest in preserving the parent-child relationship, (2) the parent's interest in preserving the parent-child relationship, and (3) any

[3] We note that when, as here, the parent rebuts the presumption of palpable unfitness, the parent may arguably have a right to reasonable efforts to reunify the family, which are usually required before a district court can terminate parental rights. *See* Minn. Stat. § 260C.301, subd. 8(1) (2020). Although reasonable efforts to reunify are not required when "a petition has been filed stating a prima facie case that . . . the parental rights of the parent to another child have been terminated involuntarily," Minn. Stat. § 260.012(a)(2), the reasoning in *R.D.L.* at least suggests that a parent who rebuts the presumption of unfitness should then be entitled to the same reasonable efforts toward reunification to which other parents are entitled. *See R.D.L.*, 853 N.W.2d at 136-38. But the district court here found that reasonable efforts to reunify were not required under section 260.012(a)(2), and appellant does not challenge that finding, so we do not address that issue.

competing interests of the child. Minn. R. Juv. Prot. P. 58.04(c)(2)(ii). "Competing interests include such things as a stable environment, health considerations and the child's preferences." *In re Welfare of R.T.B.*, 492 N.W.2d 1, 4 (Minn. App. 1992).

We review a district court's best-interests determination for an abuse of discretion. *In re Welfare of Child. of J.R.B.*, 805 N.W.2d 895, 905 (Minn. App. 2011), *rev. denied* (Minn. Jan. 6, 2012). "Because the best-interests analysis involves credibility determinations and is generally not susceptible to an appellate court's global review of a record," we give "considerable deference to the district court's findings." *J.K.T.*, 814 N.W.2d at 92 (quotation omitted).

Here, in determining that termination is in the children's best interests, the district court concluded that the children's need for stability, proper care, and safety outweighed the children's and appellant's interest in preserving the parent-child relationship. The district court also considered appellant's history of abuse and that the children deserved a safe environment. It found that appellant was unable to be that safe caregiver based on his inability to recognize and deal with his history of abuse. It credited the GAL's testimony that termination is in the best interests of the children. It acknowledged that the children have a financial interest in preserving the parent-child relationship and that appellant is genuinely interested in being part of his children's lives. But the district court ultimately concluded that appellant's interest in reunification, and the children's interest in maintaining the parent relationship with appellant, was outweighed by their need for safety. The record supports the district court's findings.

Appellant argues that the district court relied primarily on the GAL's testimony that appellant's changes were not significant in light of the severity of the past abuse. We disagree. Although the district court relied in part on the GAL's recommendation, it also relied on its own review of the child-protection reports underlying the 2013 termination, its assessment of appellant's mental health and treatment progress since 2013, and testimony from county social workers that there was not a case plan that they could provide that would ensure the children's safety. Moreover, the district court must consider relevant factors, including those affecting the children's interest. Here, the severity and nature of appellant's past abuse and the sufficiency of his efforts to address his past issues were relevant to determining whether the children would be safe if the parent-child relationship was maintained.

Appellant also argues that it was unfair for the district court to rely on the fact that appellant had no ongoing bond with the children, because respondent severed that bond when it prohibited appellant from seeing the children starting in May 2021. But while the district court did acknowledge that appellant does not have an ongoing relationship with the children due to the no-contact order, it did not rely solely on this factor in making its best-interests determination. And, as a general matter, whether the children have a bond with appellant is a relevant factor to weigh when considering the children's interest in the parent-child relationship. We therefore discern no abuse of discretion in the district court's determination that termination is in the best interests of the children.

III. Appellant was not deprived of a fair trial by attorney misconduct or judicial bias.

Appellant argues that attorney misconduct and judicial bias denied him a fair trial. Due process affords to every party the right to an impartial tribunal in both civil and criminal cases. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). Whether a party was denied its right to a fair trial and whether a judge violated the Code of Judicial Conduct are questions of law that we review de novo. *See State v. Dorsey*, 701 N.W.2d 238, 246, 249 (Minn. 2005). Appellate courts presume that district court judges have discharged their duties properly. *See Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008). Adverse rulings by a judge do not, by themselves, constitute judicial bias. *State v. Sailee*, 792 N.W.2d 90, 96 (Minn. App. 2010), *rev. denied* (Minn. Mar. 15, 2011). "The bias must be proved in light of the record as a whole." *Hannon*, 752 N.W.2d at 522.

Appellant first argues that respondent's attorney implied that appellant was responsible for K.K.A.T.'s broken leg. Appellant argues that this implication was without evidentiary foundation. However, appellant does not appear to have objected to respondent's questions at trial regarding K.K.A.T.'s broken leg on these grounds. The parties stipulated to the exhibits, including K.K.A.T.'s medical records. At trial, both parties questioned the witnesses about K.K.A.T.'s broken leg. Additionally, the district court acknowledged both at trial and in its order that there had been no finding of maltreatment regarding K.K.A.T.'s leg and that the doctor had been unable to determine whether the injury resulted from abuse. The district court's acknowledgment is supported by the record.

Appellant appears to essentially challenge the district court's finding that "the similarities between the injuries" were "highly relevant in determining whether the children would be safe in [appellant's] care." But even if that finding was erroneous, the district court's consideration of K.K.A.T.'s injury does not establish that the district court was unfairly biased against appellant. *See Peterson v. Knutson*, 233 N.W.2d 716, 720 (Minn. 1975) (stating that even a "fundamentally erroneous" district court finding "does not necessarily show [judicial] bias"). Furthermore, although appellant argues that the district court made K.K.A.T.'s leg injury a "core tenant" of its termination order, the district court's order identified its concerns about K.K.A.T.'s injury as only one of numerous other considerations underlying its decision to terminate appellant's parental rights.

Appellant next argues that the district court showed bias by engaging in age discrimination regarding S.L.L. Judges must not "in the performance of judicial duties . . . manifest bias or prejudice" based on age. Minn. Code Jud. Conduct Rule 2.3(D). But judges are not precluded from "making legitimate reference" to age when it is "relevant to an issue in a proceeding." *Id.*

Appellant first points to the district court's statement that "[i]t is noteworthy that [appellant's] last two partners were also significantly younger than appellant; during both child-protection matters have also defended appellant and their relationship; and have also downplayed any concerns regarding [appellant's] mental health." In so noting, the district court was not manifesting bias toward S.L.L. over her age but rather identifying similarities between appellant's current relationship and his past relationships, which had contributed to the unsafe conditions that led to the 2013 termination. Comparing appellant's current

behaviors and circumstances to his past behavior and circumstances was relevant to the central issue in this case of whether appellant had made changes since 2013 such that the presumption of unfitness no longer applies.

Appellant next points to the district court's comments on S.L.L.'s age when it found S.L.L.'s testimony not credible. The district court stated in its findings of fact that

> [S.L.L.]'s viewpoint is shaped by a naïve willingness to believe [appellant]'s version of events, despite significant evidence to the contrary. Given her young age, this is not surprising. However, the Court finds that [S.L.L.]'s testimony as to appellant and the children's safety lacks adequate foundation, given her belief that appellant had been telling the truth when in fact, he disclosed at trial that he had not been telling the truth.

The district court's comment that S.L.L.'s naïveté was unsurprising "given her young age" may have been unnecessary. However, even when a district court's comments are "not always appropriate," appellate courts generally do not intervene unless the comments were prejudicial or deprived a party of its right to a fair trial. *See Uselman v. Uselman*, 464 N.W.2d 130, 139 (Minn. 1990). Appellant has not shown that the comments about S.L.L.'s age were so prejudicial that he was deprived of a fair trial, nor has he shown that the outcome would have been different had the district court not made such comments. *See id.* Moreover, while the district court referenced S.L.L.'s age, it explained that it primarily found S.L.L.'s testimony not credible because S.L.L. failed to take appellant's history seriously and presented an idealized view of appellant. We therefore conclude that appellant was not denied a fair trial due to either judicial bias or attorney misconduct.

Affirmed.